

# HOUSE . . . . . No. 958

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By Mr. Broadhurst of Methuen, petition of Arthur J. Broadhurst relative to assets of certain discretionary trusts in divorce proceedings. The Judiciary.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Five.

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AN ACT TO PROTECT THE INTENTIONS OF SETTLORS OR DONORS OF TRUSTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     Section 1. Notwithstanding the provisions of this section or any  
2 other general or special law to the contrary, no asset of a discre-  
3 tionary trust created by a person related by consanguinity or  
4 affinity, which has as a beneficiary a party to a divorce, shall be  
5 considered a marital asset capable of division or assignment by  
6 the Court in a divorce proceeding. In the event a party who is not  
7 the beneficiary of such discretionary trust has gross income less  
8 than 300% of the federal poverty income level applicable to the  
9 size of that party's family, then the income of such a discretionary  
10 trust may be considered for the purpose of making an order of  
11 child support under the Child Support Guidelines or for the pur-  
12 pose of spousal support, but only to the extent that such orders  
13 may be necessary to raise the income of the non-beneficiary party  
14 to 300% of the federal poverty income level applicable to the size  
15 of the party's family. Such trust income may be taken into account  
16 without regard to whether the trustee has exercised powers of dis-  
17 cretion to make income distributions. For the purposes of deter-  
18 mining the size of the non-beneficiary party's family for the  
19 purposes of this section, said family shall include the minor chil-  
20 dren of the divorcing parties. Nothing herein is meant to deter-  
21 mine the appropriate level of support of a non-beneficiary party.

22     Any inheritance which has vested in a party after the filing of a  
23 divorce complaint, any trust created for the benefit of a party after  
24 the filing of a divorce complaint, or the beneficial interest of

25 which has vested after the filing of a divorce complaint, and any  
26 gift received by a party after the filing of a divorce complaint,  
27 shall not be considered marital property for the purpose of the  
28 division of assets pursuant to G.L. c.208, sec.34.